



October 26, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: *In the Matter of E-Mail Address Portability*, RN No. 11391 (Consumer and Government Affairs Bureau)

The Information Technology Association of America (ITAA),<sup>1</sup> by counsel, hereby opposes the Petition, filed in the above-captioned matter, requesting that the Commission initiate a rulemaking proceeding to require Internet Service Providers ("ISPs") to provide "e-mail address portability."<sup>2</sup> As discussed below, as a matter of law, the Commission lacks jurisdiction to impose such a requirement. And, even if the Commission had such jurisdiction, there is no policy justification for the Commission to do so.

The petitioner alleges that she lost access to her e-mail account with America On Line ("AOL") and, therefore, has been unable to receive email messages. This led her to file a petition asking the Commission to adopt a rule that would require all ISPs to provide "email address portability" for a period of time following the termination of an email account. The Commission should decline to do so for two reasons.

*First*, the Commission lacks jurisdiction to impose this requirement. As the Commission has long recognized, the agency "does not regulate the Internet or Internet Service Providers (ISP)."<sup>3</sup>

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<sup>1</sup> The Information Technology Association of America is the principal trade association of the software and services industry. ITAA has over 300 member companies located throughout the United States, ranging from major multinational corporations to small, locally-based enterprises. ITAA's members include a significant number of information service providers (ISPs), which use regulated telecommunications services to provide a wide range of applications to government, business and residential consumers. A complete roster of ITAA's members can be found at [www.ita.org](http://www.ita.org)

<sup>2</sup> See Public Notice, Consumer & Government Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Report No. 2832 (Sept. 26, 2007).

<sup>3</sup> See [http://www.fcc.gov/cgb/information\\_directory.html](http://www.fcc.gov/cgb/information_directory.html).

Recognizing the limits of the Commission's statutory authority, the petitioner notes that, pursuant to the Title II of the Communications Act, as amended, the Commission has adopted rules requiring telecommunications carriers to provide "local number portability." The petitioner goes on to assert that the Commission can use its "ancillary authority" under Title I of the Communications Act to fill a "regulatory gap" by imposing a "portability" requirement on ISPs. That is a misreading of the Commission's Title I authority and a faulty conclusion to draw from recent Commission activity.

Title I is not a general grant of authority to craft whatever regulatory regime the Commission believes is appropriate. Rather, it is a specifically limited grant of "ancillary authority." As the Ninth Circuit has made clear, "Title I is not an independent source of regulatory authority; rather, it confers on the FCC only such power as is ancillary to the Commission's specific statutory responsibilities . . . In the case of enhanced services [including, electronic mail], the specific responsibility to which the Commission's Title I authority is ancillary to [is] its Title II authority . . . over common carrier services."<sup>4</sup>

Although the petitioner uses the term "portability," she is not asking the Commission to "fill a gap" by extending the statutory requirement that a carrier allow its customers to keep their phone number when they move service from one local exchange carrier to another. Rather, the petitioner is asking the FCC to impose a requirement that has no relationship whatsoever to local number portability – under which ISPs would have to provide "automatic forwarding" of email messages to a new email address specified by the customer. Title I of the Communications Act simply does not empower the Commission to do so.

*Second*, as a matter of policy, there is no justification for imposition of an "email forwarding" requirement on ISPs. Congress required telephone number portability because it was concerned that consumers were "tied" to their incumbent telecommunications carrier, and because it believed that portability was necessary to facilitate competition in this market. By contrast, the business of providing email services is already highly competitive, and customers are in no way "tied" to their email accounts. Rather, customers can – and frequently do – move from one email provider to another. In response to consumer demand, some ISPs have chosen to offer email forwarding services. Other providers are offering services that enable customers to create a permanent email address based on a domain name that is "ISP independent," thereby enabling them to change ISPs while keeping their email address intact. There is, therefore, no policy justification for adopting an "email forwarding" requirement. Indeed, doing so could have adverse consequences – including the imposition of potentially significant costs on both commercial ISPs and those institutions (including universities and others non-profit institutions) that operate as their own ISPs.

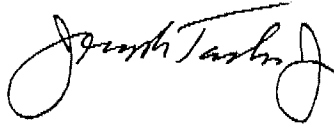
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<sup>4</sup> *California v. FCC*, 905 F.2d 1217, 1241 n. 35 (9<sup>th</sup> Cir. 1990), *cert. denied*, 514 U.S. 1050 (1995).

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For the foregoing reasons, the Commission should reject the petitioner's request to initiate a rulemaking.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph Tasker, Jr.", with a stylized, cursive script.

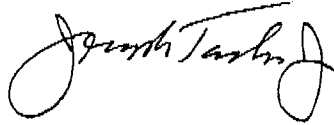
Joseph Tasker, Jr.  
General Counsel  
Information Technology Association of America

**CERTIFICATE OF SERVICE**

I, Joseph Tasker, Jr., hereby certify that on October 26, 2007, pursuant to Federal Communications Rule 1.47, I caused to be served on petitioner a copy of the letter of comment set forth in front of this certificate, by mailing a copy to the petitioner's last known address as follows:

Gail M. Mortenson  
4300 Lowell Street, N.W.  
Washington, D.C.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph Tasker, Jr.", with a stylized flourish at the end.

Joseph Tasker, Jr.  
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